

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

RYDEX, LTD.	§	
	§	
Plaintiff,	§	CIVIL ACTION NO.: 4:11-CV-122
	§	
v.	§	
	§	
FORD MOTOR COMPANY, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ REQUEST TO RE-SUBMIT MOTION  
FOR ATTORNEYS’ FEES AND COSTS**

Plaintiff, Rydex, Ltd., files this response to Defendants’ Request to Re-Submit and states as follows:

- (1) Appeals in this matter are not yet exhausted. Rydex is presently considering whether to file either (a) a request for re-hearing with the Federal Circuit or (b) a petition for certiorari to the United States Supreme Court. The deadline for filing a petition for certiorari (assuming a request for re-hearing is not filed) is May 19, 2015.
- (2) Defendants concede that this Court’s order denying Defendants’ motions for costs and fees required “completion of the appeal or the plaintiff’s abandonment of the appeal” prior to Defendants’ re-urging any motions. Dkt. No. 384. Here, Rydex’s appeal has not yet been completed and has not been abandoned. Accordingly, re-submission now of any of Defendants’ motions would be premature.
- (3) Plaintiff’s counsel has met and conferred with counsel for Defendants Toyota Motor Sales

U.S.A., Inc., Subaru of America, Ford Motor Company, Mazda Motor of America, Inc. d/b/a Mazda North American Operations, and Nissan North America, Inc. (collectively, the “Defendants”) regarding resolution of this issue and have agreed that submission of a briefing schedule which accounts for exhaustion of any further appellate proceedings would be appropriate.

- (4) Accordingly, Rydex and the Defendants propose that the parties jointly submit a briefing schedule to the Court within the next two (2) weeks allowing for (a) the completion of any further appellate proceedings; (b) the resubmission of Defendants’ motion for attorneys’ fees and costs under 35 U.S.C. § 285 and this Court’s inherent powers previously denied by the Court without prejudice; and (c) a suggested briefing schedule for Defendants’ re-filed motion for attorneys’ fees and costs under 35 U.S.C. § 285 and this Court’s inherent powers.

DATED: March 13, 2015

Respectfully submitted,

/s/ Stephen F. Schlather

Stephen F. Schlather

Texas Bar No. 24007993

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**ATTORNEY FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on March 13, 2015.

/s/Stephen F. Schlather

Stephen F. Schlather